



UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

HILL et al.

Atty. Ref.: 124-1154; Confirmation No. 5058

Appl. No. 10/573,671

TC/A.U. 2874

Filed: March 24, 2006

Examiner: E. Kim

For: FIBRE-OPTIC SURVEILLANCE SYSTEM

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August 17, 2009

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

PETITION TO THE COMMISSIONER

The Commissioner is hereby requested to direct the Patent Office to either allow all claims in the above-identified application or require the Examiner to file an Examiner's Answer and pass the previously filed Appeal Brief through to the Board of Patent Appeals and Interferences for decision on the merits. The reasons for this extraordinary request are demonstrated by a short review of the history of this application as follows:

History of Prosecution

5/17/07 First Official Action, the Examiner considers the application on the merits using the correct claim language in the rejection.

09/17/07 Applicants filed a responsive Amendment and this was considered by the Office.

12/28/07 The Examiner issues a Final Rejection, but misquotes the actual claim language.

This is brought to the Examiner's attention and the Examiner drops some of the unsupported rejection.

1/4/08 The Examiner issues another Final Rejection, but again attributes the wrong language to Applicants' pending claims.

4/3/08 In frustration with the Examiner's inability to consider the correct claim language, Applicants files a Notice of Appeal and a Pre-Appeal Brief Request for Review with s Supporting Statement which notes Errors A-H on the Examiner's part.

5/7/08 An Advisory Action agrees with Appellants Argument regarding the Goldner reference but the Decision of the Pre-Appeal Brief Request for Review Panel is to ignore the other enumerated Examiner Errors and force Appellants to go to appeal (even when the Final Rejection clearly misstates the language of Applicants' claims).

6/9/08 As requested, Appellants file the Appeal Brief comprising the remaining Examiner Errors which were noted in the Pre-Appeal Brief Request for Review.

10/2/08 Although the arguments in the Appeal Brief mirror almost verbatim the Examiner Errors set out in the Pre-Appeal Brief Request for Review Supporting Statement, the Examiner is apparently now told that these errors are unsustainable before the Board and she must send out a new Official Action dated October 2, 2008. In this third Official Action, the Examiner in the "Response to Arguments" portion agrees that the rejection should reflect the actual language of the claims. However, the Examiner now alleges that Applicants' specification does not support the definitions of the claim terms. Even more incredibly, the Examiner now drops all previous bases for rejection and institutes a completely new ground of rejection based

upon new references. Unfortunately, these rejections of the pending claims, like the original rejections, are not supported by the cited prior art.

1/12/09 Rather than continue responding to more unsupported rejections on the Examiner's part, Applicants file the second Notice of Appeal and the second Appeal Brief. The Brief points out that the Examiner has evidence of record (submitted with the amendment filed September 17, 2007) which defines the claim terms questioned by the Examiner, pointing out that they are well known terms of art. Applicants also provides a detailed rebuttal of each of the Examiner's new rejections based upon the newly cited Knudsen (U.S. Patent 6,575,033) patent.

5/15/09 Again, instead of responding to the second Appeal Brief on the merits (apparently because the Examiner could not obtain approval of the Examiner's Answer), the Examiner sends out a fourth non-final Official Action. What is most disturbing to the Applicant is that the fourth Official Action does not appear to respond to any of the rebuttal arguments set out in the Appeal Brief and with the exception of some added figures, is literally the same rejections as in the October 2, 2008 Official Action (with some additional Figures).

To the extent necessary, Appellant relies upon 37 CFR §§41.31 & 41.37 and renews the previous Appeal and believes the Appeal Brief filed January 12, 2009 is fully responsive to the pending issues. Concurrently herewith, Applicants are re-noting the Notice of Appeal for the third time. Should the Commissioner determine that the Appeal Brief is not fully responsive to any issue raised by the Examiner, notice to that effect is respectfully requested.

The Commissioner is respectfully requested to direct that the Examiner either allow the currently appealed claims or forward an Examiner's Answer which is fully responsive to the Appeal Brief filed on January 12, 2009. Should the examining group determine that the

Examiner does have a basis for rejection, then it is respectfully requested that the Commissioner direct the examining group to provide Applicants with an Examiner's Answer which responds to each of the arguments A-E as set out in the Brief. Appellant will then take the appropriate action so that this case can be timely placed on the Board of Appeals docket.

Issue was raised and joined with the filing of the Notice of Appeal in April of 2008 and now it is August 2009 and Applicants have still not received any Examiner's Answer in response to the filing of two previous Appeal Briefs. It is respectfully requested that the Commissioner direct the examining group to provide Applicants' undersigned representative with an Examiner's Answer responsive to the Appeal Brief filed January 12, 2009 in a reasonable period of time so that this case may be timely decided by the Board of Patent Appeals and Interferences.

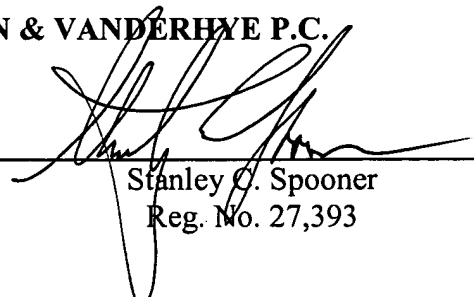
Having responded to the issues triggered by the PTO's failure to respond to two previously filed Appeal Briefs, Applicants believe that all issues in this case can be resolved by the expeditious mailing of an Examiner's Answer or an indication of allowance of all claims. The Commissioner is respectfully requested to contact Applicants' undersigned representative should there be any additional questions or comments necessary for the resolution of this Petition.

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Respectfully submitted,

NIXON & VANDERHIE P.C.

By: _____


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